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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,939	11/17/2001	John E. Auer	2000P09060 US01	2889
7590 12/01/2005			EXAMINER	
Jack J Schwartz & Associates 1350 Broadway, Suite 1507 New York, NY 10018-7702			HANNE, SARA M	
			ART UNIT	PAPER NUMBER
			2179	

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/990,939

Applicant(s)

AUER ET AL.

Examiner

Sara M. Hanne

Art Unit

2179

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 08 September 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the appeal brief received on September 8, 2005.

Claims 1-16 are pending in the application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The values derivable "from network sources" critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The claims refer to two values previously defined in the claim by user entry, therefore they cannot be also derivable from network sources, there must be some other value separate from those values in order for it to be derived from a network source to distinguish it from the others entered by the user.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-7, 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al., US Patent 6369838 hereinafter Wallace and further in view of Hamparian et al., US Patent 6012034, hereinafter Hamparian.

As in Claim 1, Wallace teaches a display generator for generating a customization menu incorporating a first window including fields for user entry of items the acquisition processor for communicating with network sources and acquiring the medical parameter value from a network source (Fig. 2, ref. 22 and Col. 6, line 35 et seq.) and a new image menu, displayed in response to user selection of a displayed icon, a new image menu displayed displaying a value of the parameter (Fig. 5, 8 and corresponding text). While Wallace shows the acquisition processor for acquiring the medical parameter value from a network source and the new image menu, displayed in response to user selection of a displayed icon, they fail to show the user interface for customizing the display parameters, labels and values as recited in the claims. In the

same field of the invention, Hamparian teaches a medical interface control system similar to that of Wallace. In addition, Hamparian further teaches a display generator for generating a customization menu incorporating a first window including fields for user entry of items including a label identifying a medical parameter (Fig. 3, Step 1), a value of the medical parameter (Fig. 3, Step 2), and a unit of measure of the parameter (Fig. 3, Step 2, "mg" and corresponding text), a second window including fields for user entry of items of a predefined list of parameters (Fig. 4, step 7 and corresponding text), a new image menu displayed (Fig. 4, Recommendation Details), displaying a value of the parameter identified by the user entered parameter label, and a value from the first predefined list of parameters, the value being deliverable from user data entry via the customization menu (Fig. 4, reference). It would have been obvious to one of ordinary skill in the art, having the teachings of Wallace and Hamparian before him at the time the invention was made, to modify the network acquired medical parameters and new image menu, displayed in response to user selection of a displayed icon of Wallace to include the user interface for customizing the display parameters, labels and values taught by Hamparian, in order to obtain a networked medical interface for parameter acquisition and control of specified parameters displayed by user selection of a displayed icon. One would have been motivated to make such a combination because a user formatted medical interface for controlling multiple aspects of medical parameters and settings would have been obtained, as taught by Hamparian.

As in Claim 2, Wallace teaches the network is internet or intra-net compatible (the network as seen by Fig. 2).

As in Claim 3, Wallace teaches a previously stored parameter value is retrieved for display in the new image menu (Fig. 4 and corresponding text).

As in Claims 4, 12 and 15, Wallace teaches the medical parameter comprises a parameter or device setting associated with a ventilation function and ventilation device settings (Column 5, lines 51 et seq.).

As in Claim 5, Wallace teaches the customization menu includes a third window permitting user entry of values for one or more of a second predefined list of parameters (Fig. 8, Fig. 15).

As in Claim 6, Wallace teaches the first predefined list includes ventilation parameters and settings (Column 5, lines 51 et seq.).

As in Claim 7, Wallace teaches the second predefined list further includes blood gas parameters (Fig. 8).

As in Claim 9 and 16, Wallace teaches displaying changed parameters and settings in a different color (Column 13, line 62 et seq.).

As in Claim 10, Wallace teaches the customization menu further includes a second user-selectable controller for storing newly entered values associated with the predefined listing of parameters and settings (See Claim 5 rejection *supra*).

As in Claim 11, Hamparian and Wallace teach a network compatible user interface system comprising a display generator for generating a customization menu comprising a first window including fields for user entry of values of one or more of a predefined list of system parameters (Fig. 4, step 7 and corresponding text), and a second window including fields for user entry of items including, a label identifying a

medical parameter (Fig. 3, Step 1), a value of the medical parameter (Fig. 3, Step 2), and a unit of measure of the parameter (Fig. 3, Step 2, "mg" and corresponding text), and a new image menu for displaying values of parameters entered by a user via the customization menu in response to user selection of a displayed icon (See Claim 1 rejection *supra* for combination).

As in Claim 13, Wallace teaches an acquisition processor (Fig. 2, ref. 30) for communicating with network sources and acquiring a customization menu defined parameter from a network source (Fig. 2, ref. 22).

As in Claim 14, Hamparian and Wallace teach a network compatible user interface system for a display generator for generating a composite window with a first window including fields for user entry of values of one or more of a predefined list of system parameters and a second window including fields for user entry of items including, a label identifying a medical parameter, a value of the medical parameter and a unit of measure of the parameter, and a new image menu for displaying values of parameters entered by a user via the customization menu in response to user selection of a displayed icon (See claims 1 and 11 rejections *supra*), and an acquisition processor (Wallace Fig. 2, ref. 30) for communicating with network sources and acquiring the medical parameter value from a network source (Wallace Fig. 2, ref. 22), wherein the new image menu is operative to display both user-entered parameter values as well as parameter values previously acquired and stored in a database (Wallace, Col. 3, line 26 et seq.) via the processor (See Claim 1 rejection *supra* for combination).

2. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamparian et al., US Patent 6012034, hereinafter Hamparian and Wallace et al., US Patent 6369838 hereinafter Wallace. and further in view of Gavish et al., US Patent 6662032.

As in Claim 8, Hamparian and Wallace teach a system for displaying a list with fields for alteration of medical parameters to be displayed upon user selection of an icon (See Claim 1 rejection *supra*). While Hamparian and Wallace teach the menu interface and submission for redisplay, they fail to explicitly show the use of the system within an Internet browser as recited in the claims. In the same field of the invention, Gavish et al. teaches a ventilation control system similar to that of Hamparian and Wallace. In addition, Gavish et al. further teaches a display generator in an Internet browser (Column 4, lines 9-21 and "device 120 accesses through the Internet a Web page maintained by the server, ... device 120, to change operating settings of the device", Column 29, lines 59-66). It would have been obvious to one of ordinary skill in the art, having the teachings of Hamparian and Wallace and Gavish et al. before him at the time the invention was made, to modify the medical parameter control system and interface taught by Hamparian and Wallace to include the useage of an Internet browser of Gavish et al., in order to obtain an Internet accessing interface for controlling the editing of medical parameters by user selection. One would have been motivated to make such a combination because a remote controller accessible over the World Wide Web for editing medical data would have been obtained, as taught by Gavish et al.

Response to Arguments

Applicant's arguments filed September 8, 2005 have been fully considered and are persuasive, however they are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record on form PTO-892 and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 C.F.R. § 1.111(c) to consider these references fully when responding to this action. The documents cited therein teach similar ventilator interfaces and medical data specification of fields such as parameter, value, and units of measure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara M. Hanne whose telephone number is (571) 272-4135. The examiner can normally be reached on M-F 7:30am-4:00pm, off on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WEILUN LO can be reached on (571) 272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

smh



WEILUN LO
SUPERVISORY PATENT EXAMINER